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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 BRIAN K. JOHNSON,) CASE NO. C09-0115-JLR
09 Plaintiff,)
10 v.)
11 WA STATE SUPREME COURT, et al.,) REPORT AND RECOMMENDATION
12 Defendants.)
13 _____)

14 Plaintiff Brian K. Johnson, proceeding *pro se*, filed an application to proceed *in forma*
15 *pauperis* (IFP) (Dkt. 1) and a proposed 42 U.S.C. § 1983 complaint (Dkt. 1-2). Mr. Johnson
16 alleges that he was wrongfully prosecuted, convicted, and imprisoned by the Washington state
17 court system (King County Superior Court, Washington State Court of Appeals, and Washington
18 State Supreme Court), King County Prosecutor Daniel Satterberg, King County prosecutors Erin
19 Norgaard and Ann Summers, and the Secretary of the Washington State Department of
20 Corrections Eldon Vail. (Dkt. 1-2, at 1-4). Mr. Johnson's proposed complaint is frivolous, fails
21 to state a claim upon which relief may be granted, and seeks monetary damages mostly from
22 immune defendants. The Court therefore recommends DENYING the request to proceed IFP,

01 and DISMISSING this action without prejudice as to Mr. Vail and with prejudice as to the other
02 defendants.

03 Pursuant to 28 U.S.C. § 1915(e)(2)(B), this Court may deny an application to proceed IFP
04 and should dismiss a complaint if it is frivolous, fails to state a claim upon which relief can be
05 granted, or seeks monetary relief against a defendant who is immune from such relief. *See* 28
06 U.S.C. § 1915(e)(2)(B); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990). Mr. Johnson’s
07 proposed complaint suffers from all three defects.

08 Mr. Johnson charges that defendants conspired in the following manner:

09 [T]o deny my . . . constitutional rights in my pre-trial that created deliberate
10 indiffer[e]nce and thus far by the state of WA[] who continue to uphold this bogus
11 case and WA D.O.C. I’ve put in my petitions to the appe[llate] courts, and state
12 supreme court and have exhausted all my remedies to be only denied of my federal
13 rights, and by doing, created a violation of my 8th Amend. [right against] cruel and
14 unusual punishment inflicted and violation of my 14th Amendment [right] of due
15 process and equal protection, fundamental fairness. It has also affected my family by
16 this form of tyrannical rule by the state of WA[] who also deprived me of my rights
17 And all who were involved “must” be criminal[ly] charge[d] . . . under 18 U.S.C.
18 § 241, & 242.

15 (Dkt. 1-2, at 4.) Mr. Johnson does not, however, specify which defendants violated his rights,
16 what acts the named defendants committed, and what injuries (aside from imprisonment based on
17 the state court convictions) he suffered. Rather, Mr. Johnson provides a laundry list of violations
18 without attaching them to a person, place, time, or action. (*See, e.g.*, Dkt. 1-2, at 6-9 (referring,
19 without reference to the named defendants, to double jeopardy, the right of confrontation, the
20 Speedy Trial Act, due process, cruel and unusual punishment, ineffective assistance of counsel,
21 and equal protection).) The true nature of Mr. Johnson’s suit is revealed in his requested relief.
22 Mr. Johnson asks the Court (1) to dismiss two state domestic violence cases; (2) to reprimand “all

01 officials” for criminal conspiracy; (3) to change the state system or sanction the state so the system
02 changes; and (4) to award him monetary damages of \$20 million. (*Id.* at 15.) That is, Mr.
03 Johnson seeks invalidation of his criminal convictions, reprimands and alterations of the state court
04 system, and monetary damages against the legal system and those responsible for convicting and
05 incarcerating him.

06 Mr. Johnson’s attempt to invalidate his criminal convictions is barred by *Heck v.*
07 *Humphrey*, 512 U.S. 477 (1994). In *Heck v. Humphrey*, the Supreme Court held that where a §
08 1983 action implies the invalidity of a criminal conviction or sentence, the action may not proceed
09 unless plaintiff first succeeds in overturning the underlying conviction or sentence through direct
10 appeal or a post-conviction proceeding. *Heck*, 512 U.S. at 486-87. Here all of the alleged
11 violations stem from the fact that the state court convicted Mr. Johnson. He is thus barred by
12 *Heck* from bringing this § 1983 action unless he can show that he has succeeded in overturning
13 his underlying conviction or sentence through direct appeal or collateral proceedings. The Court
14 notes that Mr. Johnson has already had one habeas action dismissed for failure to exhaust state
15 remedies and has since brought other habeas and § 1983 cases. *See Johnson v. Van Boening*,
16 C08-114-JLR-MAT (filed Jan. 26, 2009) (pending 28 U.S.C. § 2254 habeas petition); *Johnson*
17 *v. Vail*, No. C08-5464-FDB-JDA (W.D. Wash. filed Oct. 28, 2008) (pending § 1983 action);
18 *Johnson v. Holtgeerts*, No. C08-233-RAJ (W.D. Wash. filed Feb. 12, 2008) (dismissing §2254
19 petition for failure to exhaust state remedies); *Johnson v. King County Jail*, No. C08-232-RSM
20 (filed Feb. 12, 2008) (pending recommendation by the undersigned judge that the § 1983 action
21 be dismissed for plaintiff’s failure to comply with order compelling participation in a deposition).
22 Mr. Johnson’s present § 1983 action is frivolous because “it lacks an arguable basis either in law

01 or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

02 There are also other reasons the Court cannot provide the relief that Mr. Johnson seeks.
03 He invokes criminal conspiracy statutes as the legal grounds for reprimanding the individual
04 defendants, but those statutes do not afford a private right of action. *Aldabe v. Aldabe*, 616 F.2d
05 1089, 1092 (9th Cir. 1980) (holding that there is no private right of action under 18 U.S.C. §§
06 241, 242). Claims for money damages against judges—and by extension, the Washington state
07 courts that issued and upheld Mr. Johnson’s convictions (should they be considered “persons” for
08 purposes of § 1983)—are barred by absolute judicial immunity. *Mireles v. Waco*, 502 U.S. 9,
09 11-12 (1991). Similarly, claims for money damages against the named prosecutors are barred by
10 absolute prosecutorial immunity. *Imbler v. Pachtman*, 424 U.S. 409, 430-32 (1976). The
11 circumstances do not demand an exception to those broad immunities because it is clear that Mr.
12 Johnson challenges the courts and the prosecutors only for performing their traditional roles.
13 Furthermore, a plaintiff may not hold supervisory personnel liable under § 1983 for constitutional
14 deprivations under a theory of supervisory liability. *Taylor v. List*, 880 F.2d 1040, 1045 (9th
15 Cir.1989). Rather, a plaintiff must allege that a defendant's own conduct violated the plaintiff's
16 civil rights. In this case, Mr. Johnson fails to allege the personal participation of King County
17 Prosecutor Daniel Satterberg and Secretary of the Washington State Department of Corrections
18 Eldon Vail in the alleged constitutional violations and, instead, relies solely on their roles as
19 supervisors. In fact, all of Mr. Johnson’s allegations fail to state a claim due to noted omissions:
20 Mr. Johnson never refers to a specific defendant committing any specific act that might constitute
21 a constitutional violation.

22 Because this action appears to be frivolous, fails to state a claim upon which relief can be

01 granted, and seeks monetary damages from immune defendants, it is subject to dismissal under 28
02 U.S.C. § 1915(e)(2)(B) and Federal Rule of Civil Procedure 12(b)(6). The fact that Mr. Johnson
03 is no longer a prisoner does not change this conclusion.¹ *See Lopez v. Smith*, 203 F.3d 1122, 1129
04 (9th Cir. 2000) (“[S]ection 1915(e) applies to all in forma pauperis complaints, not just those filed
05 by prisoners.”). The Court advises Mr. Johnson of his responsibility to research the facts and law
06 before filing a complaint in order to determine whether his claim for relief is frivolous. If Mr.
07 Johnson files a frivolous action, he may be sanctioned. *See Fed. R. Civ. P. 11*. If a plaintiff files
08 numerous frivolous or malicious complaints, the Court may bar him from proceeding in this Court.
09 *See DeLong v. Hennessey*, 912 F.2d 1144, 1146-48 (9th Cir. 1990) (discussing bar order
10 requirements).

11 Because of the severe deficiencies in Mr. Johnson’s proposed complaint, his application
12 to proceed IFP should be DENIED and this case DISMISSED without prejudice as to Eldon Vail
13 and with prejudice as to the other defendants. 28 U.S.C. § 1915(e)(2)(B). A proposed Order of
14 Dismissal accompanies this Report and Recommendation. If Mr. Johnson believes that the
15 deficiencies outlined herein can be cured by an amendment to his complaint, he should lodge an
16 amended complaint as part of his objections, if any, to this Report and Recommendation.

17 DATED this 17th day of February, 2009.

18 

19 Mary Alice Theiler
20 United States Magistrate Judge

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22 ¹ On February 5, 2009, Mr. Johnson informed the Court that he had been released from
confinement. (Dkt. 5.)